S.B.Civil Writ Petition No.1160/2005

Chief M.D., M/s. Hindustan Zinc Ltd. and another.
vs.
Judge, I.T. Cum Labour Court and another.

Date : 2.7.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.R Joshi, for the petitioners.
Mr.A Sahlot, for the respondent no.2.

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Heard learned counsel for the parties as the parties requested for final disposal of the writ petition.

Brief facts of the case are that the respondent no.2, who at the relevant time was working as Head Operator, applied for voluntary retirement under the scheme floated by the petitioner HZL on 1.4.2000. The respondent workman disclosed his basic salary as Rs.4,500/-. The respondent's said application was accepted by the petitioner by order dated 30.4.2000 and he was found entitled to Rs.8,56,599/-. A recovery of Rs.39,072/- was effected because of the reasons mentioned in payment order dated 30.4.2000 and the respondent was paid Rs.8,17,527/- in total and he accepted the said amount in the year 2000 itself. The

petitioner almost after more than three years submitted a petition under Section 33(c)(2) of the Industrial Disputes Act, 1947 and claimed that he is entitled to leave encashment for LTC. According to the respondent, that amount was not paid is admitted fact. The respondent also claimed that he did not avail LTC. The Labour Court vide order dated 16.11.2004 after rejecting the petitioners' objection, allowed the respondent no.2's application under Section 33(c)(2) of the Act of 1947 and granted relief of Rs.60,000/- after observing that the respondent's sum for LTC was for the year 1998-1999. The labour court also observed that the respondent could have availed the LTC upto June, 2000.

According to learned counsel for the petitioners, the respondent was getting total salary of Rs.9,870/- and his basic salary was Rs.5,400/- as is admitted by the respondent in the claim petition, therefore, he was not workman and, therefore, was not entitled to move application before the Labour Court. The petitioner also submitted that the respondent voluntarily applied for retirement and accepted the benefit thereunder without leaving any claim undecided and in view of the judgment of the Hon'ble Supreme court in the case of A.K. Bindal and another vs. Union of India and others reported in (2003) 5 SCC 163, the respondent cannot maintain any petition for any claim for his services

rendered under the employment after taking the voluntary retirement and on that basis, the Hon'ble Supreme Court observed that this is a golden handshake of the employer and employee. In view of the above reason also, the labour court committed serious error. In view of the above, according to learned counsel for the petitioners, the respondent's acceptance of the amount is full and final settlement and not only this, the labour court has no jurisdiction under Section 33 (c)(2) to adjudicate any of the right of any of the party and it is only a proceeding of virtual execution of already determined claim.

Learned counsel for the respondent no.2 submitted that the facts are not disputed. The respondent no.2 applied for voluntary retirement and before that, he submitted his claim for LTC, therefore, his right was established because of the admitted fact of the case and, therefore, the labour court, if has granted the relief of LTC, then the labour court has not committed any error of law. So far as other objections are concerned, learned counsel for the respondent submitted that the respondent submitted the claim petition under Section 33(c)(2) because of the reason that it requires no adjudication in view of the admitted facts.

I considered the submissions of learned counsel

for the parties and perused the facts of the case.

It is settled law that the labour court cannot pass any award under Section 33(c)(2). It can enforce any award or determined right as permissible by law only. By order dated 16.11.2004, the labour court has determined the right of the respondent of LTC and of leave encashment which was beyond the jurisdiction of the labour court. Apart from above, in view of the judgment of the Hon'ble Supreme Court in the case of A.K. Bindal (supra), the writ petition deserves to be allowed on this ground alone that the respondent after accepting voluntary retirement cannot establish his any claim out of the above services.

In view of the above reasons, this writ petition is allowed and the impugned order dated 16.11.2004 is quashed with no order as to costs.

(PRAKASH TATIA), J.

S.Phophaliya